IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4606 of 2004
Date of Decision: 10.10.2006

Kanwaljeet Singh ...Petitioner

Versus

Manak Ram ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Rakesh Nagpal, Advocate, for the petitioner.

Shri J.S. Cooner, Advocate, for the respondent.

JUDGMENT

The defendant is in revision petition aggrieved against the order passed by the learned first Appellate Court on 18.8.2004, whereby the defendant-petitioner was restrained from interfering in possession of the plaintiff over the land bearing Khewat/Khatauni No. 433/724, Khasra Nos. 11//1 Min, 11/2 Min, 11/6 Min, 12/1 Min, 12/2 Min situated at village Hamidpur, Tehsil Barara, District Ambala.

It is the case of the plaintiff that the land measuring 2 kanals 4 marlas is purported to be purchased by the defendant vide registered sale deed dated 7.3.2000 executed on behalf of Surinder Singh. It is the case of the plaintiff that said Surinder Singh died on 13.7.1991 and, therefore, the sale on the basis of which the defendant is claiming possession is not sustainable. Apart from the said sale deed, the defendant is relying upon the purchase of another 4 kanals of land vide registered sale deed dated 27.3.2001 executed on behalf of the present plaintiff.

A perusal of the sale deed dated 27.3.2001 leaves no manner of

doubt that sale is of undivided joint property. The question whether Surinder Singh has died on 13.7.1991 and consequently the sale purportedly executed on his behalf is illegal and void, is a question which can be decided after evidence is led. The sale of undivided share in favour of the defendant will not confer any right to claim actual physical possession of the property in dispute. The right of the petitioner in such circumstances is to seek actual partition of the joint land.

However, at this stage, I do not find any patent illegality or irregularity in the impugned order passed by the learned first Appellate Court, whereby the defendant has been restrained from interfering in peaceful possession of the plaintiff in respect of the land in dispute.

Hence, the present petition is dismissed.

10-10-2006 (HEMANT GUPTA)
ds JUDGE
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